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Responsibility of international organizations

Comments and observations received from international organizations

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I. Introduction

In its 2002 report, the International Law Commission (ILC) recommended that the Secretariat approach international organizations with a view to collecting relevant materials, especially on questions of attribution and of responsibility of member States for conduct that is attributed to an international organization. Accordingly, by letter dated 23 September 2002, selected international organizations were invited to inform the Commission of their relevant practice and submit primary source materials relevant to the ILC study on responsibility of international organizations. In its 2003 report, the Commission, bearing in mind the close relationship between this topic and the work of international organizations, requested the Secretariat to circulate, on an annual basis, the chapter of the report of the Commission on this topic to the United Nations, its specialized agencies and some other international organizations for their comments. By letters dated 23 September 2002 and 1 October 2003, the above requests were relayed to selected international organizations by the Secretariat.

Subsequently, on 9 December 2003, the General Assembly adopted resolution 58/77, entitled "Report of the International Law Commission on the work of its fifty-fifth session". In paragraph 5 of that resolution, the Assembly requested the Secretary-General to invite States and international organizations to submit information concerning their practice relevant to the topic "Responsibility of international organizations", including cases in which States members of an international organization may be regarded as responsible for acts of the organization. This invitation was transmitted to selected international organizations by the Secretariat by letter dated 18 December 2003.

As of 20 April 2004, replies had been received from the following international organizations (dates of submission in parentheses): European Commission (7 March 2003 and March 2004), International Atomic Energy Agency (14 November 2002 and 29 March 2004), International Monetary Fund (7 February 2003, 29 January 2004 and 25 February 2004), International Seabed Authority (28 April 2003), Multinational Force and Observers (24 March 2003), Organization of American States (8 January 2003), Organisation for the Prohibition of Chemical Weapons (31 October 2002), United Nations Development Programme (15 December 2002), United Nations Secretariat (3 February 2004), World Health Organization (19 December 2003), World Trade Organization (received 6 November 2002). These replies are reproduced in section II below, in a topic-by-topic manner. Additional replies received will be reproduced as addenda to the present report. In addition, attachments to the submissions of international organizations are reproduced in the annex to this document.

II. Comments and observations received from international organizations

A. General remarks

European Commission

Our general view on the work of ILC in 2003 was expressed in the European Union (EU) statement to the Sixth Committee of the General Assembly on 27 October 2003.[1]

Given its role as an actor and participant in the international system, the European Community (EC) naturally takes a great interest in the topic of the responsibility of organizations and recognizes that it may have particular relevance to its own activities.

The EC is often described as differing from the "classical" model of an international organization in a number of ways. Firstly, the EC is not only a forum for its member States to settle or organize their mutual relations, but it is also an actor in its own right on the international scene. The EC is a party to many international agreements with third parties within its areas of competence. Quite often the EC concludes such agreements together with its member States, each in accordance with its own competencies. In that case the specificity of the EC lies in the fact that the EC and the member States each assume international responsibility with respect to their own competencies. The EC is also involved in international litigation, in particular in the context of the WTO.

Secondly, the EC is regulated by a legal order of its own, establishing a common market and organizing the legal relations between its members, their enterprises and individuals. Legislation enacted under the EC treaty forms part of the national law of the member States and thus is implemented by member States' authorities and courts. In that sense, the EC goes well beyond the normal parameters of classical international organizations as we know them. It is important that the ILC draft articles should fully reflect the institutional and legal diversity of structures that the community of States has already established.

In that respect we submit that established notions such as "regional economic integration organization" reflected in modern treaty practice may require special consideration when dealing with substantive questions in the subsequent ILC draft articles.

While the EC is in many ways *sui generis*, it is clear that all international actors, be they States or organizations, need to recognize their international responsibility in the event of any wrongful acts. This does not exclude the possibility of taking differences into account in the course of the future work of the ILC concerning the responsibility of international organizations. Above all, common sense practical solutions are needed in order to cover a wide variety of situations and to cover the activities of organizational structures in a range of fields.

[1] See A/C.6/58/SR.14.

International Monetary Fund

We appreciate being invited to comment on this topic. Furthermore, we are interested in being involved in future discussions on it as we have a number of concerns with respect to the development of a body of law on the responsibility of international organizations, including the complex issue of attribution and how the activities of the IMF might be affected.

...

We appreciate being invited to comment on the proposed draft articles and assure you of the IMF's continued interest in this important project.

...

We would like to take this opportunity to express particular concerns about two aspects of this project. As a general matter, we do not necessarily agree that rules on State responsibility should be applied to international organizations. The differences between the legal status of States and that of international organizations are significant, as are the differences among international organizations. Furthermore, it seems to us that any analysis of the responsibility of international organizations must take into account the provisions of the international agreements by which individual organizations were created. Also, more particularly, State responsibility rules on attribution that deal with acts of external entities are of limited, if any, relevance to international organizations. We know of no case in which the act of an external entity has been attributed to the IMF and, in our view, no act of an entity external to the IMF could be attributable to the IMF unless an appropriate organ of the IMF ratified or expressly assumed responsibility for that act.

...

As expressed in our previous correspondence on this issue, we have reservations about the degree to which provisions from the ILC draft articles on State responsibility should be applied to or relied on with regard to international organizations.

First, certain key concepts have been borrowed from the draft articles on State responsibility without being defined with reference to international organizations. We note that the draft articles on international organizations use terms such as the "responsibility" or "international obligations" of international organizations without any explanation or definition in relation to international organizations. These undefined references imply that there is an established body of international law that determines what the terms "responsibility" or "international obligations" mean with regard to an international organization. In fact, paragraph 6 of the commentary to draft article 3 recognizes that the meaning of the term "international responsibility" is not defined. In our view, a body of law explaining the meaning of these critical terms with respect to international organizations does not exist. Therefore, it is premature for the draft articles on international organizations to use these basic terms and seek comment on provisions that turn on the use of these basic terms without providing guidance as to their intended substantive meaning. Such guidance must satisfy the basic requirements of providing notice of what precise criteria would be used to determine whether or not an international organization could be held liable and required to provide compensation for the consequences of its actions. Unless clear definitions and precise criteria are set forth in the articles, the

international organizations would confront such an uncertain and potentially destructive legal environment that, out of concern that their activities could subject them to endless claims and litigation, they could become substantially inhibited in carrying out their mandates. Therefore, we anticipate that we will need to supplement our comments on the present draft articles, as well as our responses to the specific questions asked, once we have been given the opportunity to review the anticipated provisions that define these (and other) key concepts.

In this connection, we are particularly concerned that the draft articles do not identify the entities that would be competent to apply, interpret or enforce the draft articles. It is important to know whether the intention is for the articles to be applied by national courts according to their own views of the obligations of international organizations or by an international agency that would be expected to have general competence over all international organizations. If the intention is for national courts of member States to have competence to apply the articles, the courts of each State would need to ensure that they apply the draft articles in a manner that is consistent with that State's obligations under the charter of the relevant international organization. Furthermore, either approach could be inconsistent with the charters of some international organizations that have provisions for dispute resolution and interpretation of their constituent documents.

Second, States and international organizations are fundamentally different. Therefore, before any principle of State responsibility can be applied to international organizations, the principle must be tested against these fundamental differences. As recognized by the International Court of Justice in its opinion on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*,[2] international organizations are "unlike States" in that they "do not possess a general competence". International organizations are established by the agreement of their member States for the specific purposes set out in their constituent agreement and the powers and responsibilities of international organizations must, therefore, be assessed primarily against the provisions of their respective constituent instruments.

Third, while States are functionally and organizationally very similar to each other, there are significant differences among international organizations. The draft articles provided make insufficient reference to the law or practice of international organizations but rely, rather, on the fact that the principles contained in these three draft articles were accepted with reference to States. For instance, the fundamental question of attribution must, for each international organization, be determined with reference to the treaty that established the organization, the decisions of its governing bodies and the established practice of the organization. Therefore, in discussing questions of attribution, particular attention will need to be paid to the differences in the treaty-based laws and practices of the various international organizations. As mentioned in our earlier correspondence, the IMF considers that only acts of officials performed in their official capacity would be attributable to the IMF and generally a determination as to whether or not an official was acting in his official capacity would rely on the findings or decisions of competent organs of the Fund.

International Seabed Authority

[2] *ICJ Reports 1996*, p. 66 at p. 78, para. 25.

As I am sure you are aware, the United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the implementation of Part XI contain a number of unique provisions relating to the responsibility and liability of the Authority. In the coming years, the Authority will need to consider how to implement these provisions and, for that reason, we consider the work of the International Law Commission to be of great value and importance.

World Health Organization

Concerning the report of the International Law Commission, WHO would like to register its appreciation for the work conducted so far, and in particular for the adoption of three articles on first reading at the 2003 session. We support the general thrust of the articles and consider the choice of the Commission to rely in principle on the approach followed in the articles on responsibility of States for internationally wrongful acts to be logical. We do not have specific comments on the articles in question at this stage.

...

While we regret not having more materials or cases to contribute at this time, our research would probably be facilitated if the Commission or the Special Rapporteur were to formulate specific questions or issues on the subject of attribution or other relevant aspects of the topic at hand.

B. Draft article 1 — Scope of the draft articles

Draft article 1, as provisionally adopted by the Commission at its fifty-fifth session, reads as follows:

"*Article 1*
Scope of the present draft articles

1. The present draft articles apply to the international responsibility of an international organization for an act that is wrongful under international law.

2. The present draft articles also apply to the international responsibility of a State for the internationally wrongful act of an international organization."[3]

International Atomic Energy Agency

With respect to the ILC commentary to draft article 1:

Paragraphs (1)-(3): No comment.

Paragraph (4): The last sentence of this paragraph suggests that one case in which an international organization may be held responsible is that of an internationally wrongful act committed by another international organization of which the first organization is a member. This potential case seems to be to a large extent parallel to that of a State that is a member of the international organization that committed the internationally wrongful act. Prima facie, any potential responsibility of a State member of an international organization and of an

[3] A/58/10, para. 53.

international organization that is a member of another international organization should be treated similarly.

Paragraph (5): No comment.

Paragraph (6): Given the Agency's comment on paragraph (4), it seems that the potential responsibility of an international organization for the internationally wrongful acts of an international organization of which the first organization is a member needs to be considered in parallel with the potential responsibility of a State that is a member of the organization committing the internationally wrongful act, as well as a State member of the first international organization. Prima facie, the same considerations would apply in all cases.

Paragraph (7): Reference is made to the fact that responsibility of States for internationally wrongful acts only refers to the cases in which a State aids, assists, directs, controls or coerces another State and it is suggested that, if the question of similar conduct by a State with regard to an international organization were not regarded as covered, at least by analogy, in the articles on State responsibility, the present draft articles could fill the resulting gap. Given that, normally, an international organization acts on the basis of decisions, etc., taken by its policy-making organs, it would seem that the States that participated in the decision (whether *ultra vires* or not) that "authorized" the internationally wrongful act by the organization could be jointly and severally responsible. In this connection the situation in the International Tin Council in the early 1980s would appear to be relevant. However, the means by which the policy-making organ(s) took the decision may be relevant. For example, if the decision were taken by consensus, all States participating in the decision could be regarded as jointly and severally liable. If the decision were taken by vote, should States that voted against the decision or abstained be regarded as jointly, but not severally, liable? If a State induced the secretariat of an organization to carry out an unauthorized or *ultra vires* act, it would seem to be easier to regard that State as responsible.

Paragraphs (8) and (9): No comment.

International Monetary Fund

The reference to "acts wrongful under international law" needs to be defined and explained. In particular, the relationship between the draft articles and the constituent instrument of an organization requires explanation. Since there is no existing body of international law on the matter of what constitutes a wrongful act of an international organization and the evolution of such a body of law would largely rely on general principles of law, the overriding legal effects of the provisions of the charters of the international organizations, which have been expressly agreed upon and are primary sources of international law, must be made clear. Also, it should be clear in the draft articles that when an international organization acts pursuant to its charter, it would not be subject to liability for doing so under general international principles (that are implicitly referred to but not set forth in substance in the draft articles), but its liability would be determined under its own charter.[4] Furthermore, to the extent that organizations would be expected to

[4] International organizations are entities generally created by countries for specific purposes and to perform certain functions. The attributes of each organization, such as legal personality, privileges and immunities, powers and scope of responsibilities are or could be set forth in the

conform to international norms that are incorporated into the proposed articles which would supplement the provisions of their charters, they must have actual notice of the substance of those norms. Otherwise, they should not be bound because this would violate the most fundamental principles regarding the requirement of notice as the foundation for accountability.

[Draft article 1, paragraph 2]

The responsibility of a member State to other member States for an act committed by an international organization must be subject to the rules of that organization. There is no principle of international law that limits States' ability to set up international organizations to act collectively and on behalf of the membership and to provide, explicitly or by implication, that when doing so, neither the organization nor its member States would be held responsible or liable by fellow member States, or their subjects, for breaches of international obligations or internationally wrongful acts that were consequences of the organizations' activities.

It may be that the international law of States' responsibility should explicitly provide that individuals or States would have recourse, under rules of international law concerning States' responsibility, against member States of an international organization for actions that were taken by an international organization. This would be particularly appropriate when the international organization was acting as the agent of the member State in discharging an obligation of the State. However, such legal doctrine should also clearly recognize that in the case of an international financial institution created to achieve legitimate collective goals, and not created as a means of shielding member States from responsibility in the discharge of pre-existing obligations, the exposure to liability of a member State (whose relationship to the organization is comparable to a shareholder in a corporation) for the acts or omissions of the organization should be limited to the amount of the financial contributions or guarantees of that member.

C. Draft article 2 — Use of terms

Draft article 2, as provisionally adopted by the Commission at its fifty-fifth session, reads as follows:

"*Article 2*
Use of terms

For the purposes of the present draft articles, the term "international organization" refers to an organization established by a treaty or other instrument governed by international law and possessing its own international

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agreement under which the organizations are established. So long as, and to the extent that, an organization is performing its functions and acting, itself or through its officials, within the scope of its authorized activities, it cannot be made subject to responsibilities or liabilities that are not provided for in its constituent documents. The management of an organization would be in violation of its official duties if it were to make payments to claimants for claims that were not recognized as legitimate expenses under the charter and regulations of the organization.

legal personality. International organizations may include as members, in addition to States, other entities."[5]

International Atomic Energy Agency

With respect to the ILC commentary to draft article 2:

Paragraph (1): No comment.

Paragraph (2): If an international organization does not possess one or more of the characteristics outlined in the draft articles, the draft articles would not apply to such an organization. Therefore, if certain of the principles and rules stated in the draft articles do apply to such an organization, those principles and rules would, presumably, apply to the organization on a basis other than the draft articles.

Paragraphs (3)-(14): No comment.

International Monetary Fund

We refer to our general comments set out above on the differences between international organizations *inter se* and have no further comments on this article.

D. Draft article 3 — General principles

Draft article 3, as provisionally adopted by the Commission at its fifty-fifth session, reads as follows:

"*Article 3*
General principles

1. Every internationally wrongful act of an international organization entails the international responsibility of the international organization.

2. There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:

(a) Is attributable to the international organization under international law; and

(b) Constitutes a breach of an international obligation of that international organization."[6]

International Atomic Energy Agency

With respect to the ILC commentary to draft article 3:

Paragraphs (1)-(4): No comment.

Paragraph (5): The principle that "when an international organization commits an internationally wrongful act, its international responsibility is entailed" is well established; however, it would be useful to refer to a less obtuse judicial statement of that principle than the one quoted.

[5] A/58/10, para. 53.
[6] A/58/10, para. 53.

Paragraphs (6)-(9): No comment.

Paragraph (10): It is difficult to see how Article 103 of the Charter of the United Nations might provide a justification for an organization's conduct in breach of an obligation under a treaty with a non-member State of the organization, particularly for an organization, like the Agency, which has no provision in its Statute that is equivalent to Article 103. The precise effect of Article 103 of the Charter of the United Nations is also not free from doubt (including with respect to non-member States of the United Nations: see *The Charter of the United Nations A Commentary*, Second edition, volume II, at page 1298).

International Monetary Fund

As mentioned above, this article refers to concepts concerning "internationally wrongful acts" and the "responsibility" of international organizations that have not been developed and, accordingly, are neither generally understood nor broadly accepted in relation to international organizations. The draft articles should provide guidance on what constitutes or determines "internationally wrongful acts". Furthermore, the draft article must provide a clear definition of what is meant by "responsibility". Does the concept of responsibility mean any one or more of the following:

(a) Acknowledging publicly that the action or omission was wrongful?

(b) Payment for actual damages suffered by victims of the wrongful act?

(c) Payment of indirect losses resulting from the wrongful act?

(d) Payment of punitive damages for the wrongful act?

In considering what is intended by "responsibility", one issue to be addressed is how would an international organization be held responsible for a finding by a national court or international tribunal that it had failed to fulfil the mandate for which it was established (which the court considered a breach of obligation and an internationally wrongful act of the organization)? Could the court order the organization to cease conducting its business? Could the court award damages that would financially bankrupt the organization? Could the failure of an organization to achieve its stated goals result in court orders that would cause its member States to lose the capital that they contributed or guaranteed — if so, to whom? If so, the court's decision could, in effect, override the will of the organizations' member States.

Furthermore, while the immunities of an organization are conceptually distinct from the responsibility of the organization, the immunities of the organizations, which vary with different organizations, must be reconciled with the proposed articles on responsibility. An organization's immunities may protect the assets of the organization from being used for any reason or by any means other than what is specifically authorized by the treaty that created it. Any judicial decision to the contrary would violate a fundamental protection that enables the organization to conduct its international responsibilities, as provided in the treaty that created it. For some international organizations the immunities provided for in their charters are essential to the ongoing viability of the organization because the immunities protect them from vexatious claims and potential financial destruction by courts of many different countries that would have differing or conflicting views about the organization's international obligations. The draft articles and commentary seem to

suggest, by implication, that the draft articles would override the immunities provided to the organizations in their charters, but this approach would render the provisions of those charters virtually meaningless and such an approach cannot be reconciled with the specific terms of the agreements entered into by the member countries.

The inclusion of "omissions" along with "actions" that would trigger the organization's responsibility may also lead to some problems that were not necessarily applicable when dealing with responsibility of States. Such omissions may result from the application of the organization's decision-making process under its constitutive instrument. Would an organization be responsible for not taking action, if this non-action is the result of the lawful exercise of their powers by its member States? Again, the draft articles must recognize and provide that the charters of international organizations are the primary sources of law that determine the obligations of the organizations and that, while general principles of international law that are consistent with an organization's charter may supplement or complement the laws and regulations applicable to the organization, inconsistent customary or general principles of international law (whether or not reflected in the proposed articles on the responsibility of international organizations) would neither override the provisions of an organization's charter nor govern actions taken pursuant to the provisions of the organization's charter.

E. Reference to the "rules of the organization"[7]

European Commission

With respect to question (a), the European Commission affirms that a possible general rule of attribution of conduct to international organizations should indeed contain a reference to the "rules of the organization". These rules define the powers and their scope of the "organs" or "institutions" of the international organization and of its officials or persons acting on its behalf. They are, therefore, of great importance for ensuring that the international organization as a subject of international law shall be held responsible for the conduct of all the organs, instrumentalities and officials which form part of the organization and act in that capacity. There can be no doubt that the "rules of the organization" are important for *attribution* of a specific conduct to the international organization.

They are, however, equally important for the second limb of paragraph 2 of draft Article 3, namely the question whether the obligation of which a breach is alleged is an obligation of the international organization in question. This is the question, as one of the great experts in the field, Pierre Klein, has put it, of the "*articulation de la responsabilité entre l'organisation et ses Etats membres*", of the apportionment of the obligation as between the organization and its members. This apportionment is entirely determined by the rules of the organization, since these rules define the tasks and powers of the organization which possesses its own international legal personality, vis-à-vis those of the member States.

[7] The International Law Commission, in its 2003 report, requested the views of Governments on the following question:

"Whether a general rule on attribution of conduct to international organizations should contain a reference to the 'rules of the organization'". See A/58/10, para. 27.

This question of apportionment of obligations and responsibilities should in principle be clearly distinguished from the question of attribution of conduct. The latter question can only arise once the first one has been answered in the affirmative. It is clear that there can be no attribution to the international organization, if the organization cannot in the first place be apportioned exercise of the obligation which it is alleged to have breached. On the other hand, once responsibility must be apportioned to the organization and cannot be apportioned to the member States, it must be very doubtful if conduct (even by member State organs) can still be attributed to the member States, since according to the internal rules of the organization they are no longer bearers of the obligation under international law.

The following example from European Community practice illustrates the problem. Member State customs authorities follow a policy of tariff classification which is alleged to be contrary to the trade provisions of an agreement that has been concluded by the European Community and its member States together. The question of apportionment of the obligation and of responsibility would have to be decided in favour of the Community, since trade policy is an exclusive competence of the Community which has been wholly transferred by the member States to it. It would seem to be impossible in such a situation to say that the action by member States' customs authorities should nonetheless lead to the attribution of the conduct to the member States, since they are not the carriers of the obligation any longer.

The draft, therefore, should probably make room for the internal rules of the organization as an element that is important not only for the question of the attribution of conduct, but also — and perhaps foremost — for the question of the apportionment of responsibility. As a corollary of that, it might be made clear that apportionment is really the primary question and attribution the secondary one. Finally, thought should be given to the question whether the rules on attribution should accommodate the situation in which the organs of member States act in reality as organs of the international organization.

International Atomic Energy Agency

Prima facie, it seems that it would be useful and appropriate for such a general rule to contain a reference to the "rules of the organization" as such rules are, in the Agency's view, an important parameter that is relevant to a consideration of the attribution of conduct to an international organization.

International Monetary Fund

With respect to the questions raised by the Commission in paragraph 27 of its report, we would concur with the Commission that the general rule on attribution of conduct to international organizations should contain a reference to the "rules of the organization".

United Nations Secretariat

A general rule on attribution of conduct to an international organization should contain a reference to the "rules of the organization" — the equivalent of "the internal law of the State" under article 4 (1) of the draft articles on responsibility of States for internationally wrongful acts. It is indeed by reference to the rules of the organization that an organ, a person or entity of the organization whose conduct engages the responsibility of the organization is defined.

World Health Organization

Concerning the questions posed by the Commission to member States and reproduc :d in chapter IV of the Commission's report, WHO is of the view that a general rule on attribution of conduct to international organizations should indeed contain a reference to the rules of the organizations, and that the definition given in article 2, paragraph 1 (j) of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations would be adequate, at least as a point of departure for a definition more suitable to the specific purpose of the draft articles.

F. Definition of "rules of the organization"[8]

European Commission

As regards question (b), the European Community takes the view that the definition of "rules of the organization" as it appears in article 2, paragraph 1 (j) of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations may serve as a starting point. However, this definition might need further refinement if it is intended to cover the case of the EC by it as well.

First, it is important for the EC that the definition of the internal rules of the organization should encompass next to "the constituent instruments, decisions and resolutions adopted in accordance with them" other sources as well. As you are aware, sources of Community law would include, e.g., general principles of law.

Second, the case law of the European Court of Justice and the Court of First Instance is of particular importance. It offers important guidelines about the apportionment of responsibility as between the Community and its member States. Accordingly, it should be emphasized that the notion "established practice of the organization" must be understood broadly as encompassing the case law of the courts of an organization. We would therefore recommend making this point clear either in the text by referring to "established practice of the organization, including case law by its courts" or by explaining this point in the commentary to the draft definition.

International Atomic Energy Agency

Again, prima facie, it seems that the definition is adequate. However, such rules are only one relevant parameter. Another parameter relevant to the attribution of conduct to an international organization would seem to be treaties concluded by the organization.

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[8] The International Law Commission, in its 2003 report, requested the views of Governments on the following question:

"If the answer to [the question reflected in footnote 7 above] is in the affirmative, whether the definition of 'rules of the organization', as it appears in article 2, paragraph 1 (j), of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, is adequate". See A/58/10, para. 27.

International Monetary Fund

We further agree with the Commission that the proposed definition of the "rules of the organization", as it appears in article 2, paragraph 1 of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, is adequate and complete for the present purpose. We believe this provision is consistent with the requirement that attribution, in the case of an international organization, can only be determined with reference to the treaty that established the organization, the decisions of its governing bodies and the established practice of the organization.

United Nations Secretariat

The definition of the "rules of the organization" contained in article [2], paragraph 1 (j) of the 1986 Vienna Convention is, for the purpose of this study, adequate. It is particularly so in connection with peacekeeping operations where principles of international responsibility for the conduct of the force have for the most part been developed in the 50-year practice of the Organization.

World Health Organization

Concerning the questions posed by the Commission to Member States and reproduced in chapter IV of the Commission's report, WHO is of the view that a general rule on attribution of conduct to international organizations should indeed contain a reference to the rules of the organizations, and that the definition given in article 2, paragraph 1 (j) of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations would be adequate, at least as a point of departure for a definition more suitable to the specific purpose of the draft articles. What matters most in this case is the retention of a reference to the established practice of the organization as one category of "rules" of that organization. It is evident in our view that, when considering the attribution of conduct by an agent, organ or other person or entity to the organization, the role of the practice of that organization in the delimitation or specification of such attribution cannot be ignored and should be given formal status through its inclusion in the concept of "rules of the organization".

G. Attribution of the conduct of peacekeeping forces to the United Nations or to contributing States[9]

European Commission

The European Community does not take a position on question (c) as it does not relate to Community law.

[9] The International Law Commission, in its 2003 report, requested the views of Governments on the following question:

"The extent to which the conduct of peacekeeping forces is attributable to the contributing State and the extent to which it is attributable to the United Nations." See A/58/10, para. 27.

International Atomic Energy Agency

This is a question that should best be answered by the United Nations Legal Counsel.

International Monetary Fund

The issue of attribution of the conduct of peacekeeping forces to the United Nations is specific to that organization and, in the absence of particular proposals on this issue, we do not have any comments. We have reservations, however, about including such a specific issue, which applies to a limited number of organizations, in draft articles that aim at setting forth the principles of responsibility of all international organizations. If any principles or rules applicable to peacekeeping operations are included, the scope of such principles and rules should be explicitly limited to peacekeeping activities and organizations that conduct such activities.

United Nations Secretariat

The question of attribution of the conduct of a peacekeeping force to the United Nations or to contributing States is determined by the legal status of the force, the agreements between the United Nations and contributing States and their opposability to third States.

A United Nations peacekeeping force established by the Security Council or the General Assembly is a subsidiary organ of the United Nations. Members of the military personnel placed by Member States under United Nations command although remaining in their national service are, for the duration of their assignment to the force, considered international personnel under the authority of the United Nations and subject to the instructions of the force commander. The functions of the force are exclusively international and members of the force are bound to discharge their functions with the interest of the United Nations only in view. The peacekeeping operation as a whole is subject to the executive direction and control of the Secretary-General, under the overall direction of the Security Council or the General Assembly as the case may be.

As a subsidiary organ of the United Nations, an act of a peacekeeping force is, in principle, imputable to the Organization, and if committed in violation of an international obligation entails the international responsibility of the Organization and its liability in compensation. The fact that any such act may have been performed by members of a national military contingent forming part of the peacekeeping operation does not affect the international responsibility of the United Nations vis-à-vis third States or individuals.

Agreements concluded between the United Nations and States contributing troops to the Organization contain a standard clause on third-party liability delineating the respective responsibilities of the Organization and contributing States for loss, damage, injury or death caused by the personnel or equipment of the contributing State. Article 9 of the Model Memorandum of Understanding between the United Nations and [Participating State] contributing resources to [The United Nations Peacekeeping Operation] provides in this regard:

> "The United Nations will be responsible for dealing with any claims by third parties where the loss of or damage to their property, or death or personal injury, was caused by the personnel or equipment provided by the Government

in the performance of services or any other activity or operation under this memorandum. However if the loss, damage, death or injury arose from gross negligence or wilful misconduct of the personnel provided by the Government, the Government will be liable for such claims" (A/51/967, annex).[10]

While the agreements between the United Nations and contributing States divide the responsibility in the relationship between them, they are not opposable to third States. Vis-à-vis third States and individuals, therefore, where the international responsibility of the Organization is engaged, liability in compensation is, in the first place, entailed for the United Nations, which may then revert to the contributing State concerned and seek recovery on the basis of the agreement between them.

The principle of attribution of the conduct of a peacekeeping force to the United Nations is premised on the assumption that the operation in question is conducted under United Nations command and control, and thus has the legal status of a United Nations subsidiary organ. In authorized chapter VII operations conducted under national command and control, the conduct of the operation is imputable to the State or States conducting the operation. In joint operations, namely, those conducted by a United Nations peacekeeping operation and an operation conducted under national or regional command and control, international responsibility lies where *effective* command and control is vested and practically exercised (see paras. 17-18 of the Secretary-General's report A/51/389).

H. Rules for attribution of conduct

European Commission

The particular structure and "supranational" nature of the Community should be borne in mind when analysing its international responsibility as an international organization. Unlike classical intergovernmental organizations, the European Community (EC) constitutes a legal order of its own, with comprehensive legislative and treaty-making powers, deriving from transfer of competence from the member States to the Community level. Moreover, the Community's decision-making procedures have particular features of their own, including qualified majority voting at the level of its Council. One may also note that concepts such as "regional economic integration organization" have emerged in the drafting of multilateral treaties, which seem to reflect some of these special features. While a number of areas of international activities fall within the shared competences of the EC and the member States (e.g. the environment), in other areas (e.g. most but not all trade-

[10] A similar provision is contained in article 6 of the model agreement used by the Organization to obtain gratis personnel (ST/AI/1999/6, annex). It reads:

"The United Nations shall be responsible for dealing with claims by third parties where the loss of or damage to their property, or death or personal injury, was caused by the actions or omissions of the ... personnel in the performance of services to the United Nations under the agreement with the Government. However, if the loss, damage, death or injury arose from the gross negligence or wilful misconduct of the ... personnel provided by the donor, the Government shall be liable to the United Nations for all amounts paid by the United Nations to the claimants and all costs incurred by the United Nations in settling such claims."

related issues) the Community alone is competent to legislate and enter into international agreements.

One distinctive feature of Community law, including international obligations adopted by the Community, is that it is automatically applicable in the member States without separate ratification acts being necessary. Another feature of Community law is that, for the most part, its practical implementation is carried out by the authorities of the member States instead of the EC institutions themselves. There is no Community administration throughout the Community territory comparable to the federal Government in federal States. Typically, even in areas of exclusive Community competence, like customs tariffs, implementation is ensured by the national customs administrations of the Member States rather than a separate Community customs service.

The characteristics outlined above raise two strands of questions concerning the international responsibility of the EC and/or its member States. First, the "vertical" dimension of the relationship between the Community and its member States raises one set of issues. The fact that the implementation of Community law, even in areas of its exclusive competence, is normally carried out by the member States and their authorities, poses the question as to whether or when the EC as such is responsible not only for acts committed by its organs, but also for actions of the member States and their authorities. Secondly, there is a "horizontal" dimension between the Community and its member States, raising another set of issues for the purposes of international responsibility. International agreements in fields of shared competence between the member States and the Community frequently result in so-called "mixed agreements", to which both the EC and the member States are contracting parties. Such a situation calls for delineation of their respective responsibilities vis-à-vis third parties to an agreement. The two aspects described above are reflected in the enclosed materials.

As a general observation, it should be noted that, in practice, the Community's international responsibility has arisen only in the context of international obligations *ex contractu* with third parties rather than in a non-treaty context. In the framework of international treaty law, the principle *pacta sunt servanda* not only carries the idea that treaties are binding, but also that they are binding, under international law, only on those who are formally the parties to a treaty (concept of privity). This formal aspect of international treaty law is perhaps worth emphasizing, given that even in the case of pure Community agreements their implementation is in large part carried out by the member States (and their authorities) which are not formally contracting parties to a treaty. In the case of mixed agreements, to which both the Community and the member States are parties, responsibility under public international law may also be affected by other considerations related to the division of competence between the Community and the member States.

Vertical dimension of the relationship between EC and its member States: some examples

Issues related to the vertical dimension between the Community and the member States are not confined to pure Community agreements, but may also arise in the framework of mixed agreements, e.g. the WTO Agreement. The EC position as regards the attribution of acts of the member States to the EC itself, for the purposes of its international responsibility, is reflected in the materials related to

WTO litigation (Docs. 1-7). The statements in the LAN case (Docs. 1-4) explain the "vertical" structure of the EC system as far as it concerns the authorities of the member States (customs administration) acting as implementing authorities of EC law in a field of exclusive Community competence. The EC took the view that the actions of these authorities should be attributed to the EC itself and emphasized its readiness to assume responsibility for all measures within the particular field of tariff concessions, be they taken at EC level or at that of the member States (see Doc. 1, para. 6; Doc. 2 reply to question one; Doc. 3, para. 4/11). These views are also reflected in the final panel report (Doc. 4), recognizing the EC customs union and related EC measures which were at issue in the LAN case.

Another example of attributing acts by bodies within the member States to the EC is reflected in some earlier GATT cases (Docs. 5, 6 and 7). These cases further highlight the above-mentioned characteristics concerning the implementation of Community obligations by administrative authorities and organizations within the member States. It may be noted that even measures taken by private producers' organizations in the member States, acting within the Community's agricultural intervention system, are regarded as "governmental measures" taken by the Community (see Doc. 5, para. 4.13; Doc. 6, para. 4.6; Doc. 7, paras. 2.11-2.12, 8.15-8.17). Also in these cases, the responsibility resulting out of these actions was entirely assumed by the Community vis-à-vis the other GATT parties.

In the area of intellectual property rights under the TRIPS Agreement (largely subject to member State competence) some variation in the dispute settlement practice over time may be noticeable. First requests for consultations were addressed solely to the member State concerned and the solution was reached between the claimant and that State (Doc. B concerning Portugal), whereas in some subsequent similar cases, the Community participated in the settlement negotiations (cases brought against Sweden and Denmark, Docs. 9 and 10). More recently, consultations as well as the establishment of a panel were requested against both the member State concerned and the EC separately, while the settlement was negotiated among the claimant, the member State concerned and the EC (see Docs. 11-16).

Responsibility of the member States for acts of Community organs: the case of treaties to which the Community is not a party

A very different dimension of the vertical relationship between the Community and its member States has arisen in cases where the member States, but not the EC, are parties to an international agreement, in particular in the human rights context. In these cases the issue of vertical relationship is put in reverse terms: the possible responsibility of the member States for acts of the Community.

This line of inquiry has been explored in some decisions by the European Commission of Human Rights (Doc. 17: Application No. 13258/87 and Doc. 18: Application No. 8030/77). The former case related to execution of a judgement by the Court of Justice of the European Communities in the area of competition law. While not excluding the possibility that a member State could be held responsible under the European Convention on Human Rights, the Commission of Human Rights nevertheless concluded that the application was inadmissible (***ratione materiae***) in this case, where the act of the member States consisted of issuing a writ of execution for a judgement of the European Court of Justice. The Commission of Human Rights considered inter alia that it would be contrary to the very idea of

transferring power to an international organization to hold the member State responsible for examining whether article 6 of the Convention on Human Rights had been respected in the underlying proceedings (Doc. 17, p. 8). Also in the second (earlier) decision, the Commission of Human Rights found the application inadmissible (*ratione personae*), considering that the member States by taking part in the decision of the Council of the European Communities had not in the circumstances of that case exercised "jurisdiction" in the sense of article 1 of the Convention on Human Rights. The underlying issue concerned the applicant's (trade union) right to be appointed to the Consultative Committee set up by the Treaty establishing the European Coal and Steel Community and to be heard in that context, which raised issues related to articles 11, 13 and 14 of the European Convention on Human Rights. In that case there was no effective remedy at the domestic level nor access to the European Court of Justice (Doc. 18, p. 500).

More recently, also in the area of competition law — and still pending before the European Court of Human Rights (Case No. 56672/00) — an applicant has claimed the responsibility of the 15 EU member States for a judgement of the European Court of Justice rejecting its demand for the suspension of an obligation to pay a fine that had been imposed on it by the Commission. In this case the issue at stake concerns the procedures applied by the Court of First Instance and the European Court of Justice, involving alleged violation of the applicant's right to judicial appeal in accordance with article 6 of the Convention on Human Rights. The member States, emphasizing inter alia the separate legal personality of the EC and the independence of the Commission and its decisions from the member States, have argued in favour of inadmissibility *ratione personae*. The European Commission was also permitted to intervene, associating itself with the submissions by the member States and the arguments put forward by them (Doc. 19, p. 7, 9 ff.).

Another example of the possible responsibility of the member States for measures taken by EC institutions has arisen in the context of the Chicago Convention on International Civil Aviation. In this case, too, only the 15 member States are parties to the Convention, while the Community is not. The subject matter of a dispute brought before the ICAO Council concerned an EC regulation enacted by the EC Council of Ministers (Regulation No. 925/1999, the so-called "Hushkits Regulation"), imposing certain noise-related constraints on the operation and registration of certain aircraft in the European Community. In this case, unlike in the human rights cases referred to above, there was no preliminary objection to the jurisdiction of the ICAO Council even though it related to a Community regulation alleged to infringe upon certain provisions of the Convention (Doc. 20). It may be pointed out that the 15 EC member States presented a joint defence and appointed the Director General of the European Commission's Legal Service as their agent ("*à titre personnel*") (see Doc. 21). The case is formally pending even though the Hushkits Regulation has been repealed.

Horizontal dimension of the relationship between the EC and its member States: some examples

The horizontal dimension of the relationship between the EC and the member States arises in the context of mixed agreements, where both the member States and the EC act as contracting parties to international agreements.

It may be noted that this question has come up *en passant* in the context of article 47.1 of the draft articles on responsibility of States for internationally wrongful acts (General Assembly resolution 56/83 of 12 December 2001, annex), dealing with the situation concerning the issue of plurality of responsible States. It seems to adopt a neutral position, providing as follows:

> "Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act".

The corresponding ILC commentary, while taking notice inter alia of the EU practice related to mixed agreements, states as follows:

> "Paragraph 1 neither recognizes a general rule of joint and several responsibility, nor does it exclude the possibility that two or more States will be responsible for the same internationally wrongful act. Whether this is so will depend on the circumstances and on the international obligations of each of the States concerned". (Report of the International Law Commission A/56/10 at p. 317)

The European Community, as an international organization with limited legal powers, is only capable of concluding international treaties to the extent that it has been granted the necessary competence.[11] However, as many international agreements cover a wide range of aspects they often result in mixed agreements concluded by both the EC and its member States.

This has led to a situation where more and more frequently special "declarations of competence" are envisaged when a regional economic integration organization such as the Community enters into multilateral international agreements. The EC declarations, made pursuant to specific treaty requirements, describe the competencies in the fields relevant to the agreement concerned (Docs. 22-34). Some of the declarations specify that the Community is (only) responsible for the performance of the obligations covered by Community law in force or falling in its respective sphere of competence (Doc. 22: Declaration to the Cartagena Protocol; Doc. 23: Declaration to the Convention on the Transboundary Effects of Industrial Accidents; see also Doc. 24: Article 6.1 of Annex IX of the United Nations Convention on the Law of the Sea). Such declarations reflect a separate responsibility of the Community and its member States, in accordance with their respective competencies, and make this evident to third parties.

The issue of responsibility in accordance with the respective competencies declared to third parties is highlighted in the recent case brought against the Community before the International Tribunal for the Law of the Sea. While both the Community and the member States are parties to the United Nations Convention on the Law of the Sea, the particular issue at stake (acts by vessels flying the flags of member States in the framework of conservation measures regarding living resources of the high seas) falls within the Community competence, as stated in its respective Declaration. The claimant accordingly invoked solely the responsibility of the EC for breach of the obligations resulting from, in particular, articles 64 and 116 to 119 of the Convention (Doc. 35, pp. 1-2). The case is currently pending before the Tribunal.

[11] Cf. e.g. the preamble of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 21 March 1986.

Some agreements contain provisions establishing special regimes of responsibility for certain obligations, like article 6.2 of Annex IX of the United Nations Convention on the Law of the Sea and article 4.5 of the Kyoto Protocol (Doc. 25). In the latter case, the EC negotiated a special clause providing for a global commitment for the economic integration organization as a whole, while permitting differentiated allocation of commitments among its members. In that case, the organization is responsible for achieving the global target, whereas its individual member States are responsible only in respect of commitments as internally agreed and notified accordingly. While these provisions refer to the material question of responsibility, some agreements provide for solutions as far as the procedural implementation of responsibility is concerned (see para. 8 of Annex B to the Convention concerning the International Commission for the Rhine, Doc. 36).

The Energy Charter Treaty illustrates another example that could be cited in this context. The Communities made a statement pursuant to article 26 (3) (b) (ii) of that Treaty (Doc. 37) with regard to the investor-State arbitration procedures. The statement declares inter alia as follows:

> "The European Communities are a regional economic integration organisation within the meaning of the Energy Charter Treaty. The Communities exercise the competences conferred on them by the member States through autonomous decision-making and judicial institutions.
>
> The European Communities and the member States have both concluded the Energy Charter Treaty and are thus internationally responsible for the fulfilment of the obligations contained therein, in accordance with their respective competencies.
>
> The Communities and the member States will, if necessary, determine among them who is respondent party to arbitration proceedings initiated by an Investor of another Contracting Party. In such case, upon the request of the Investor, the Communities and the member States concerned will make such determination within a period of 30 days (*)."
>
> "*This is without prejudice to the right of the investor to initiate proceedings against both the Communities and their member States."

It may be noted that, in situations where no specific declaration of competence has been made, the issue of possible joint responsibility of the Community and its member States can be subject to somewhat different views. This is also reflected for instance in the opinions of the Advocates General of the European Court of Justice. While Advocate General Tesauro (in case C-53/96 Hermès, para. 14, Doc. 38) as well as Advocate General Jacobs (in case C-316/91, para. 69, Doc. 39) appear to suggest that joint responsibility should be recognized, in case C-13/00, Commission v. Ireland (Doc. 40, para. 29/30), Advocate General Mischo seems to take an opposite view. He pointed out inter alia that the very fact that the EC and its member States had recourse to the formula of a mixed agreement announces to non-member States that the agreement does not fall wholly within the competence of the Community and that the EC is a priori only assuming responsibility for those parts which fall within its competence.

At all events, it needs to be noted that in practice, the claim for international responsibility has never failed for the reason that it has been brought against a "wrong party" in the context of mixed agreements.

As far as mixed agreements of a bilateral nature are concerned, the European Court of Justice seems to regard the EC and the member States as jointly responsible vis-à-vis the other party for the implementation of all obligations resulting from the agreement. This conclusion seems to follow from the usual wording used in such agreements, providing that the agreement was concluded "of the one part" by the Community and the member States and the African, Caribbean and Pacific States, "of the other part" (Case C-316/91 European Parliament v. Council; Doc. 42, para. 29).

Internal EC law framework relating to compliance with international obligations

There are a number of means under Community law which may be relevant to the enforcement of obligations resulting from international agreements. In particular, article 300 (7) of the Treaty establishing the European Community (TEC) should be mentioned here. It provides as follows:

> "Agreements concluded under the conditions set out in this article shall be binding on the institutions of the Community and on member States".

This provision makes international treaties binding under Community law with regard to the member States and the institutions: they are obliged to take all measures necessary for the effective implementation of international agreements concluded by the Community and to abstain from acts which could hinder the proper implementation of agreements. Thereby it also enables the Community to fulfil its international responsibilities. Formally, it is a *res inter alios acta*, constituting a Community law obligation, which cannot be invoked by a third party under international law (Doc. 43: Case 104/81 Kupferberg, para. 13; Doc. 44: Case 12/86 Demirel, paras. 9-11; Doc. 38: Case C-53/96 Hermès, Advocate General's opinion, paras. 18-20; Doc. 41: judgement of the Court in Case C-13/00 Commission v. Ireland, para. 15). In reality, however, the provision provides an additional assurance to third States that the Community will honour its obligations.

Article 10 of TEC could also be mentioned in this context. It provides as follows:

> "Member States shall take all appropriate measures, whether general or particular to ensure fulfilment of the obligations arising [out] of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.
>
> They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty."

It should also be pointed out that, in its Opinion 1/94 WTO Agreement (Doc. 45), the Court of Justice has confirmed that there exists a duty of cooperation in a situation involving shared competencies between the Community and the member States. It stated inter alia that

> "[I]t is essential to ensure close cooperation between the member States and the Community institutions, both in the process of negotiation and conclusion and in the fulfilment of the commitments entered into. That obligation to

cooperate flows from the requirement of unity in the international representation of the Community ..." (para. 108)

While it is not the intention to review here the various judicial actions such as infringement procedures that can be used to bring cases to the attention of the European Court of Justice, separate mention could perhaps be made of the EC system of non-contractual liability of its institutions. It is in this particular context that questions of attribution arise under Community law and it could be relevant in view of the type of issues that the ILC is likely to address in its codification work regarding the responsibility of international organizations. Article 288 (2) of TEC sets out the relevant Community legal framework on this issue, which has been the subject of a rich jurisprudence by the European Court of Justice. It provides as follows:

"In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the member States, make good any damage caused its institutions or by its servants in the performance of their duties."

The European Court of Justice has interpreted the various elements of this provision on frequent occasions; such as those requiring specification of an act as an act of a Community "institution" (Doc. 46: Case C-370/89 Etroy, para. 15) or of its "servant" (Doc. 47: Case 18/60 Worms [1962] ECJ, 195, at 204), in the "performance of its duties" (Doc. 48: Case 9/69 Sayag/Leduc, para. 11). This jurisprudence also elucidates the circumstances under which acts by a Member State's administrative authority can give rise to Community liability or where the Member States should be liable for a damage caused in the implementation of Community law (Doc. 49: Case 175/84 Krohn, para. 18 ff./23; Doc. 50: Case C-282/90 Vreugdenhil, para. 15). The main criterion for the determination of a Member State's liability is the margin of discretion left to it in implementing Community law obligations. Only in cases where the Member State is bound, by a Community decision, to act in a certain way can the Community be held liable for the resulting damage. These rules are of course only applicable under Community law, even though the issues at stake may relate to the implementation of international obligations, as in the case of the implementation of United Nations sanctions (Doc. 51: Case T-184/95 Dorsch, paras. 74-88).

International Atomic Energy Agency

Responsibility of the Agency for acts committed by the wrongful conduct of its officials, agents or other persons acting on its behalf, as far as I am aware, has been considered only in the context of the development of the Standardised Structure and Content of the Comprehensive Safeguards Agreements in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. This includes a paragraph 17, which states:

"The Agreement should provide that any claim by one party thereto against the other in respect of any damage, other than damage arising out of a nuclear incident, resulting from the implementation of safeguards under the Agreement, shall be settled in accordance with international law."

At the time, a note by the Director General was prepared, entitled "The international responsibility of the Agency in relation to safeguards"

(GOV/COM.22/27, 24 June 1970), taking substantive account of the then available reports of the Special Rapporteur(s) of the International Law Commission on "State responsibility".

The subject of the note was the international responsibility of the Agency in the context of responsibility for damage arising out of the application of safeguards under the Treaty on the Non-Proliferation of Nuclear Weapons. The note outlines:

(a) The Agency's safeguards activities from which damage might arise;

(b) Some of the legal considerations which appear to be relevant to a discussion of the Agency's responsibility; and

(c) A number of clauses relating to responsibility, proposed for insertion into Safeguards Agreements.

International Monetary Fund

[S]tate responsibility rules on attribution that deal with acts of external entities are of limited, if any, relevance to international organizations. We know of no case in which the act of an external entity has been attributed to the IMF and, in our view, no act of an entity external to the IMF could be attributable to the IMF unless an appropriate organ of the IMF ratified or expressly assumed responsibility for that act.

...

The second specific question relates to the rules of attribution by which the IMF might be held responsible for the wrongful acts of officials, agents or other persons acting on its behalf. In one case the IMF has taken the position that it will defend its officials and assert immunities when an official is sued in his official capacity for actions performed by him or other officials in an official capacity. The case of *David Kissi v. Jacques de Laroisière [sic], Managing Director, The International Monetary Fund* was a civil law suit initiated in 1982 before the United States District Court for the District of Columbia. The plaintiff (who had never been employed by the IMF) sued the Managing Director of the IMF, claiming that he had been wrongfully denied a position at the IMF and was discouraged from reapplying. The court dismissed the suit for lack of jurisdiction because of the IMF's immunity and the immunity of the Managing Director as an official of the IMF acting in his official capacity, therefore without the IMF having to take a position on the substance of the matter. A copy of the court's order in this matter is enclosed.

Our view is that the criteria used for determining whether or not the acts of an IMF official would be attributable to the IMF should be consistent with the criteria used to determine whether or not the conduct of IMF officials constituted acts performed by them in their official capacity to which the IMF's immunities would apply (Article IX, Section 8 of the IMF's Articles of Agreement). The enclosed "Policy statement on the immunity of Fund officials", dated 28 June 2002, indicates how the IMF would ensure that the immunity of IMF officials is respected; the principle which underlies the statement is that the IMF will assert immunities in respect of acts performed by an official in an official capacity. Accordingly, we consider that only acts of officials performed in their official capacity would be attributable to the IMF.

Note, also, in this regard that for the purposes of the statement it is the Managing Director of the IMF who would determine whether the arrest or detention of an IMF official was made for acts performed in an official capacity and, accordingly, whether the IMF's immunities would be involved. We note furthermore, first, that the IMF would take steps pursuant to its own rules against any member which did not respect immunities or comply with obligations ancillary to those immunities and, second, that Article XXIX of the IMF's Articles of Agreement arising between any member of the IMF and the IMF itself, or between members of the IMF; any such issue must be determined by the IMF's internal organs. (A disagreement between the IMF and a member which has withdrawn, or between the IMF and any member of the IMF during liquidation of the IMF, would be submitted to arbitration.)

Concerning the subsidiary issue of what is covered by acts performed by officials in their official capacity, so long as an official was found to be acting in his official capacity, his acts would be attributable to the organization. Attribution may apply even though the official exceeds the authority given to him, he failed to follow rules or he was negligent. However, acts of an official that were not performed in his official capacity would not be attributable to the organization. The IMF has not dealt with a situation in which a third party claimed that he believed that an official was acting in his official capacity when he was not, but that the third party was misled to the belief by misrepresentations of the official.

...

To the best of our knowledge, the International Monetary Fund has not had a case in which there was a claim that a member State was legally responsible for the acts of the organization.

Please note that we do not understand [this] question as including situations in which allegations have been made that one or more States have influenced decisions or actions taken by the IMF and, thus, were responsible for influencing, but not legally responsible for, the organization's actions.

World Health Organization

[C]oncerning the rules of attribution of wrongful conduct, WHO does not have explicit rules specifically concerning the attribution to the Organization of conduct by statutory or other organs, or by officials or experts acting on behalf of the Organization. The constitutional provisions concerning the authority and competence of the various organs, the Staff Regulations and Rules, as well as the arrangements whereby experts on mission are appointed, guide on a general basis the determination of which conduct is attributable to WHO.

We would like, however, to draw the attention of the Commission to a particular arrangement which leads to the attribution to WHO of the conduct of another international organization. The case in question is that of the Pan American Health Organization (PAHO), previously the Pan American Sanitary Organization, the health organization of the Inter-American System. PAHO, like other regional sanitary bureaux, predates the establishment of WHO, which raised during the 1946 International Health Conference the issue of the relationship between the two organizations. Whereas other regional structures were absorbed into the new organization, an unusual arrangement was agreed upon concerning PAHO. Article

54 of the WHO Constitution provides in relevant part that "The Pan American Sanitary Organization represented by the Pan American Sanitary Bureau and the Pan American Sanitary Conferences ... shall in due course be integrated with the Organization". As a step towards integration, WHO and PAHO concluded an agreement in 1949 whereby the Pan American Sanitary Conference, through the Directing Council, and the Pan American Sanitary Bureau, would serve respectively as the Regional Committee and the Regional Office of the World Health Organization for the Americas. PAHO thus acts at the same time as a component of both the United Nations and the inter-American systems. On the basis of that arrangement, acts of PAHO and of its staff could engage the responsibility of WHO.

As a result of the foregoing, it may be stated that WHO has, on a contractual basis, accepted that the conduct of a separate organization such as PAHO be considered as conduct of WHO. Even though PAHO formally remains a separate organization and may thus act in that capacity rather than as a regional organization of WHO, the fact that its decisions and activities do not normally introduce that distinction leads to a generalized attribution of its conduct to WHO. I am enclosing, for ease of reference, a copy of the Constitution of PAHO, the 1949 WHO-PAHO agreement, as well as the relevant part of a recent scholarly work on WHO.

World Trade Organization

[W]e do not have in place any rules of attribution under which the WTO may be held responsible for the wrongful conduct of its officials, agents or other persons acting on its behalf, regardless of the source of the violated rule.

I. Practice regarding claims filed against an international organization for violations of international law

International Atomic Energy Agency

No claims have been made against the Agency alleging violations of international law.

International Monetary Fund

[T]he IMF has never had to take a position in court in response to an alleged violation by it of international law. However, in 1998, the Korean Federation of Bank and Financial Labor Unions (KFBFLU) brought a complaint against the IMF before the Seoul District Court claiming that it had suffered damages due to the policies implemented by the Government of the Republic of Korea pursuant to the arrangement between it and the IMF. The IMF asserted its immunities and the district court dismissed the complaint on that basis. KFBFLU unsuccessfully appealed that decision to the Seoul High Court, which rejected the appeal. Copies of English translations of the decisions of the courts of the Republic of Korea are enclosed.

In addition, we have received reports that the IMF was named as a defendant in a lawsuit commenced by a trade union organization in Romania which complained that the IMF imposed economic policies that impoverished Romanians. In this matter the IMF was neither served nor presented with court documents. We understand that the Romanian court objected, on its own motion, to taking

jurisdiction. Enclosed are copies of the press reports we have on the Romanian matter.

Please note that, in preparing our response to your enquiry, we have disregarded employment cases that are subject to the IMF's grievance processes and the jurisdiction of the IMF Administrative Tribunal, as well as the few contentious matters that have involved allegations of a breach of the IMF's internal administrative law, or contractual disputes, between the IMF and personnel or vendors. We have done so because none of these matters would be responsive to your enquiry. We have also disregarded the occasional correspondence we have received in which an individual or company, for itself or purportedly for the benefit of others, seeks payments for various types of perceived personal or public wrongs and injuries; generally these matters have no rational basis and are typically rejected by correspondence.

Multinational Force and Observers

The MFO is a small organization. We have been fortunate through the years in generally avoiding disputes with contributing States or in settling any matters that do arise without formal international claims being lodged. However, we have been the responding party in two international claims potentially relevant to the study.

Both of these international claims were based on provisions in the MFO's participation agreements with contributing countries, not on customary international law. Like the United Nations, the MFO concludes participation agreements with the countries that provide its troops and certain large items of equipment. These are international agreements, viewed by the MFO and by the participating countries concerned as binding under public international law. The details of these agreements have varied somewhat from country to country and over time. They typically contain a provision requiring the MFO to reimburse the contributing country for sums it pays out under its national legislation or regulations in cases of death or disability of its service members on MFO duty. In addition, a few agreements with the contributing countries that provide major capital equipment for the MFO (aircraft or ships) also include provision making the MFO responsible for damage to or loss of that equipment "when any such damage or loss occurs while the property is being utilized for MFO purposes".

Each of these types of clauses has given rise to a significant claim by a contributing country against the MFO. Both claims were ultimately settled by means of settlement agreements between the claimant State and the MFO. An unusual feature of MFO practice is to purchase commercial insurance as a risk management tool. With both claims, such insurance played a role in helping to fund the settlements, neither of which required exceptional requests for additional funds from the MFO's fund-contributing States.

Information regarding both of these claims against the MFO has been published in the MFO's annual reports and in notes to the MFO's financial reports, all of which are publicly available documents. Copies of relevant pages from past annual and financial reports are attached, as well as copies of the two settlement agreements.

The US Gander air crash claim against the MFO

The circumstances of this claim and of its resolution are briefly summarized in the auditors' note to the 1992 MFO financial statements, as follows:

> "On December 12, 1985, an Arrow Air, Inc., "Arrow" DC-8 aircraft, chartered to the MFO, crashed at Gander, Newfoundland, Canada. The crash took the lives of 248 U.S. military personnel who had completed duty with the MFO in the Sinai and eight crew members.
>
> As a result of the crash, the MFO became involved in legal proceedings with the United States Government.
>
> The MFO acknowledged liability to the United States Government for reimbursement of expenses arising out of the death of the American servicemen aboard the aircraft which crashed at Gander, and other matters, based on the contractual arrangements under which U.S. Government participation in the MFO is defined. [NOTE: the "contractual arrangements" referred to in this auditors' note are the provisions in the USA-MFO participation agreement requiring reimbursement of certain amounts paid out due to death or disability on MFO duty, as described above.]
>
> On May 3, 1990, the United States Government executed a settlement agreement settling the amount and manner of payment of these claims. The Agreement called for the payment of these claims. The Agreement called for the payment of $19,678,100 to be made no later than November 15, 1990. Payment was effected on November 13, 1990 settling the claim in full."

The United States Government has included the United States of America-MFO settlement agreement in its Treaties and International Agreements Series as TIAS 11899.

The settlement agreement includes a provision stating that the MFO entered into the agreement with the authorization of the State of Israel and the Arab Republic of Egypt. (Under the Protocol creating the MFO and related arrangements, the expenses of the organization not covered by other sources are borne equally by Egypt, Israel and the United States.) MFO annual reports indicate that the settlement was funded by funds derived from settlements of United States litigation, interest on settlement proceeds and funds from current operations. Egypt and Israel agreed to make a special pledge of additional funds if required for the settlement, but those funds were not required and the related "special pledge receivable" on the MFO's financial statements was extinguished without the funds being requested.

In addition to the international claim against the MFO described above, the Arrow crash involved the MFO in extensive litigation in United States domestic courts, both as plaintiff and defendant. That litigation is not relevant for purposes of the present study and will not be discussed here.

Canada's helicopter claim against the MFO

This second claim against the MFO was based on the second participation agreement provision noted above, that establishing MFO responsibility for damage or destruction of capital equipment provided to the MFO if the damage or loss occurs while the equipment is being utilized for MFO purposes.

The origins of this claim were described in the notes to several years' MFO financial statements as follows:

> "In December 1989 a Canadian CH-135 helicopter assigned to the MFO crashed and its crew was injured near El Gorah, Egypt, sometime after a test flight. The MFO is of the opinion that no uninsured material liability to the organization will result from this matter."

The crash led to considerable discussion between Canada and the MFO regarding the circumstances of the accident and whether the aircraft was being utilized for MFO purposes at the time, as required by the participation agreement. Canada presented a formal claim for damage to the aircraft against the MFO in 1992, followed in 1994 by a second claim for Canada's expenses related to two crewmen injured in the crash.

Then came a substantial period without any active discussion of the issue. Communications resumed in 1999. In response to Canada's recalculation of its claim, the MFO proposed a global settlement in order to bring the matter to a mutually agreeable end. The MFO proposal was accepted by Canada, a formal claims settlement agreement was concluded in November 1999 and payment was made in December 1999. The MFO maintained insurance cover on the value of the helicopter; the proceeds of that insurance provided the funds ultimately used to settle the matter.

Organization of American States

Mr. Corell's letter stated that "the Commission is interested in receiving information from selected intergovernmental organizations as to the position they have taken in response to any claims made against them alleging violations of international law". We are aware that, in recent years, such claims have arisen against several international organizations in the context of peacekeeping operations involving the use of military personnel. Happily, however, we are unaware of any such claims having been formally lodged against the OAS or its General Secretariat involving violations of international law of that nature.

The area in which the OAS has had to respond to claims alleging violation of international law is labour relations. Indeed, the Organization's decision to establish an Administrative Tribunal in 1971 was, in part, based on the need to provide a forum for adjudicating those claims consistent with international standards of due process and additional standards established by the International Labour Organization.[12]

The majority of claims presented to the OAS Administrative Tribunal allege violations of the OAS General Standards, other resolutions of the OAS General Assembly, violations of rules promulgated by the Secretary General pursuant to his authority under the OAS Charter, and violations of rules established by the Tribunal itself in its jurisprudence. Those standards and rules, having been adopted by duly constituted international authorities, all constitute international law. Thus, the complaints claiming violations of those norms and rules may be characterized as alleging violations of international law.[13]

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[12] See resolutions AG/RES. 35 (I-O171); 1318 (XXV-0/95).

[13] All of the OAS Administrative Tribunal's judgements can be accessed on the Internet through

Few of the complaints before the OAS Administrative Tribunal, however, and even fewer of the judgements, expressly cite conventions, treaties and general principles of "international law". Nonetheless, there have been exceptions. For example, in *Valverde v. Secretary General*, Judgement No. 125, III (Add.) OASAT 228-30 (1995), the plaintiff alleged that his human right to freedom of expression under article 13 of the American Convention on Human Rights had been violated when he had been summarily dismissed for having made derogatory remarks about the Secretary General to the broadcast media. The Tribunal concluded that because the staff member had not under the staff rules or otherwise in his employment contract expressly agreed to waive that right, the Secretariat should not have sanctioned him for his remarks. The Staff Rules have since been amended accordingly.[14]

In 1978, 1982 and again in 1994, the OAS Administrative Tribunal ordered the Organization to pay millions of dollars in back salary to staff members in class action lawsuits alleging violation of salary policies then in force.[15] On each occasion, several member States initially challenged the authority of the Administrative Tribunal to take jurisdiction of those cases and argued, therefore, that the Organization was not bound by those judgements. Nonetheless, because, in part, of the obligation under the OAS Charter to respect the rule of law and the right to compensation under final judgements set out in the American Convention on Human Rights, the General Assembly voted to comply with those judgements.[16]

Organisation for the Prohibition of Chemical Weapons

Apart from cases brought against the OPCW by its staff members for alleged violation of their terms of appointment, in one form or another, the OPCW has not been the subject of a claim alleging violation of international law. This, of course, is not to suggest that such claims are not foreseeable.

Even though there have as yet been no claims filed against the Organization for violation of international law, the Secretariat of the OPCW has examined the possibility of the Organisation being liable for acts or omissions of its officials to member States, to third parties and to staff members. This is part of a study on the Organisation for the Prohibition of Chemical Weapons prepared for publication by Kluwer Law International in 2000, in *International Encyclopaedia of Laws: Intergovernmental Organizations*.

United Nations Development Programme

[W]e are pleased to confirm that we do not have any cases raising issues of violations of international law.

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the homepage of the Department of Legal Services at www.oas.org. Click on "OAS Structure", then click on Department of Legal Services, then in the right-hand column, click on "Administrative Tribunal". You can also click on "OAS Structure" and scroll down to "Other Agencies and Entities" and then click on "Administrative Tribunal".

[14] See, Staff Rule 110.5. Again, go to homepage of the Department of Legal Services for the OAS Staff Rules.

[15] See, e.g., *Torres v. Secretary General*, Judgement No. 124, III(Add.) OASAT 155 (1994); *Chisman v. Secretary General*, Judgement No. 64, II OASAT 282 (1982); *Bucholz v. Secretary General*, Judgement No. 37, I OASAT 541 (1978).

[16] Resolutions AG/RES. 499 (X-O/.80); AG/RES. 632 (XII-0/82); 1278 (XXIV-O/94).

World Health Organization

Coming now to your request for information and primary source materials illustrating WHO practice with respect to claims of violations of international law made against it, I wish to inform you that to our knowledge no such claims have ever been made against WHO. We are, therefore, not in a position to provide you with information or materials in this respect.

World Trade Organization

After verification, we wish to inform you that no claim was ever made against the World Trade Organization alleging violation of international law. This may be explained not only by the young age of our organization — it was established in 1995 — but also by the nature of its tasks: WTO is essentially a forum for negotiations and dispute resolution between its members.

J. Inclusion of diplomatic protection of nationals employed by an international organization in the draft articles

European Commission

Finally, I would seize the opportunity to comment on point 28 (b) of the ILC report. The Special Rapporteur announced he might want to deal with diplomatic protection of nationals employed by an international organization. If the topic were to be included in the draft, account should be taken not only of the diplomatic protection by the State of the official's nationality but also of the functional protection offered by the international organization. In its Advisory Opinion in the *Reparations for Injuries* case, the International Court of Justice acknowledged that cases may occur in which the injury suffered by an agent of an international organization may engage the interest of both his national State and of the organization. The Court found that, in such a case, there is no rule of law which assigns priority to the one or to the other.[17] Indeed, it is hard to design an abstract rule which would offer appropriate guidance for all hypothetical cases.

For example, situations where harm is done against an official who carries out an international civil or military mission on behalf of an organization, but remains paid by the national State, would not lend themselves to easy solutions. In other cases, where harm is done against an official carrying out the core tasks of his organization, one may argue for a prerogative of the international organization to exercise functional protection. In such cases, a prerogative is justified by the need to ensure the functional independence of the international organization and its officials.[18]

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[17] International Court of Justice, Reparation for injuries suffered in the service of the United Nations, Advisory Opinion of April 11th 1949, *ICJ Reports 1949*, p. 174, at 185.

[18] We fully subscribe to the view of the ICJ which aptly expressed this need in the following way: "In order that the agent may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization, and that he may count on it. To ensure the independence of the agent, and consequently, the independent action of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization. In particular he should not have to rely on the protection of his own State. If he had to rely on that State, his independence might well be compromised". Ibid. at 183.

I therefore do not take a position on the issue at this stage, but would be prepared to elaborate on it once the topic is dealt with by the ILC in more detail.

III. List of attachments to the comments and observations received from international organizations*

European Commission

1. Oral pleadings of the European Communities to the World Trade Organization Panel on "European Communities — customs classification of certain computer equipment"; 12 June 1997

2. European Communities, Replies to the questions of the United States posed during the first substantive meeting of the Panels with the Parties of the World Trade Organization panel on "European Communities — customs classification of certain computer equipment"; 20 June 1997

3. Oral pleadings of the European Communities at the second substantial meeting of the World Trade Organization Panel on "European Communities — customs classification of certain computer equipment"; 10 July 1997

4. World Trade Organization, Report of the Panel on "European Communities — customs classification of certain computer equipment"; 5 February 1998 (WT/DS62/R; WT/DS67/R; WT/DS68/R)

5. World Trade Organization, Report of the Panel on "European Community programme of minimum import prices, licences and surety deposits for certain processed fruits and vegetables"; adopted on 18 October 1978 (L/4687-25S/68)

6. World Trade Organization, Report of the Panel on "EEC restrictions on imports of apples from Chile", adopted on 10 November 1980 (L/5047-27S/98)

7. World Trade Organization, Report of the Panel on "European Economic Community — Restrictions on imports of dessert apples — Complaint by Chile", on 22 June 1989 (L/6491-36S/93)

8. World Trade Organization Panel on "Portugal — Patent protection under the Industrial Property Act", Notification of a mutually agreed solution (WT/DS37/2, IP/D/Add.1 and Corr.1), 8 October 1996; Request for consultations by the United States (WT/DS37/1, IP/D/3), 6 May 1996

9. World Trade Organization Panel on "Denmark — Measures affecting the enforcement of intellectual property rights", Notification of a mutually agreed solution (WT/DS83/2, IP/D/9/Add.l), 13 June 2001; Request for consultations by the United States (WT/DS83/1, IP/D/9), 21 May 1997

10. World Trade Organization Panel on "Sweden — Measures affecting the enforcement of intellectual property rights", Notification of a mutually agreed solution (WT/DS86/2, IP/D/10/Add.1), 11 December 1998; Request for consultations by the United States (WT/DS86/1, IP/D/10), 2 June 1997

* The attachments to the comments and observations received from international organizations are contained in an annex to the present document, which is on file with the Codification Division of the Office of Legal Affairs and available for consultation.

11. World Trade Organization Panel on "Greece — Enforcement of intellectual property rights for motion pictures and television programs", Notification of mutually agreed solution (WT/DS125/2, IP/D/14/Add.1), 26 March 2001; Request for consultations by the United States (WT/DS125/1, IP/D/14), 7 May 1998

12. World Trade Organization Panel on "European Communities — Enforcement of intellectual property rights for motion pictures and television programs", Notification of mutually agreed solution (WT/DS124/2, IP/D/13/Add.1), 26 March 2001; Request for consultations by the United States (WT/DS124/1, IP/D/13), 7 May 1998

13. World Trade Organization Panel on "Ireland — Measures affecting the grant of copyright and neighbouring rights", Request for the establishment of a panel by the United States (WT/DS82/2), 12 January 1998; Request for consultations by the United States (WT/DS82/1, IP/D/8), 22 May 1997

14. World Trade Organization Panels on "Ireland — Measures affecting the grant of copyright and neighbouring rights" and "European Communities — Measures affecting the grant of copyright and neighbouring rights", Notification of mutually agreed solution (WT/DS82/3, WT/DS115/3, IP/D/8/Add.1, IP/D/12/Add.1) 13 September 2002

15. World Trade Organization Panel on "European Communities — Measures affecting the grant of copyright and neighbouring rights", Request for the establishment of a panel by the United States (WT/DS115/2), 12 January 1998; Request for consultations by the United States (WT/DS115/1, IP/D/12), 12 January 1998

16. World Trade Organization, Minutes of meeting held on 22 January 1998 (WT/DSB/M/41), 26 February 1998

17. Written Observations by the Commission of the European Communities, Legal Service, to the President of the European Court of Human Rights, in case No. 56672/00: DSR SENATOR LINES v. 15 member States of the European Union

18. Oral statements and comments on the US response, presented by the member States of the European Union, before the Council of the International Civil Aviation Organization under its Rules for the Settlement of Differences regarding the disagreement with the United States arising under the Convention on International Aviation done on 7 December 1944 (Doc. 7782/2), Montreal, 15 November 2000

19. Communication from the Secretary General of the Council of the European Union to the Secretary General of ICAO, concerning the joint defence of the 15 member States, Brussels, 24 July 2000

20. Decision of the European Commission of Human Rights, Application No. 13258/87 by M. & Co. against the Federal Republic of Germany, 9 February 1990

21. Decision of the European Commission of Human Rights, Application No. 8030/77, Confédération Française Démocratique v. European Communities, alternatively their member States (1) a) jointly and b) severally, 10 July 1978

22. Council Decision 2002/628/EC of 25 June 2002 concerning the conclusion, on behalf of the European Community, of the Cartagena Protocol on Biosafety, including Annex B: Declaration by the European Community in accordance with article 34 (3) of the Convention on Biological Diversity

23. Council Decision 98/685/EC of 23 March 1998 concerning the conclusion of the Convention on Transboundary Effects of Industrial Accidents, including as Annex II: Declaration by the European Community pursuant to article 29 (4) of the Convention on the Transboundary Effects of Industrial Accidents concerning competence

24. Annex IX to the United Nations Convention on the Law of the Sea; Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof; including Annex II: The European Community's instrument of formal ratification including the Declaration concerning the competence of the European Community with regard to matters governed by the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement of 28 July 1994 relating to the implementation of Part XI of the Convention

25. Council Decision 2002/358/CE of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the U.N. Framework Convention on Climate Change and the joint fulfilment of commitments thereunder

26. Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the U.N. Framework Convention on Climate Change

27. Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity

28. Council Decision 98/414/EC of 8 June 1998 on the ratification by the European Community of the Agreement for the implementing of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling stocks and highly migratory fish stocks

29. Council Decision 88/540/EEC of 14 October 1988 concerning the conclusion of the Vienna Convention for the protection of the ozone layer and the Montreal Protocol on Substances that Deplete the Ozone Layer

30. Council Decision 98/216/EC of 9 March 1998 on the conclusion, on behalf of the European Community, of the United Nations Convention to combat desertification in countries seriously affected by drought and/or desertification, particularly in Africa

31. Council Decision 95/308/EC of 24 July 1995 on the conclusion, on behalf of the European Community, of the Convention on the protection and use of transboundary watercourses and lakes, including as Annex II the Declaration by the Community pursuant to Article 25 (4) of the Convention on the protection and use of transboundary watercourses and international lakes

32. Council Decision 93/329/EEC of 15 March 1993 concerning the conclusion of the Convention on Temporary Admission and accepting its annexes, including as Annex III a notification made in accordance with article 24 (6) of the Istanbul Convention

33. Décision du Conseil du 25 Novembre 1991 concernant l'adhesion de la Communauté économique européenne a l'Organisation des Nations Unies pour l'alimentation et l'agriculture (OAA), including as annex II a declaration of

competence. Note concerning the "Mise à jour" of the declaration of competence, Brussels, 28 September 1994

34. Commission Decision 1999/819/Euratom of 16 November 1999 concerning the accession to the 1994 Convention on Nuclear Safety by the European Atomic Energy Community (Euratom), including as an annex the Declaration by the European Atomic Energy Community according to the provisions of Article 30 (4) (iii) of the Nuclear Safety Convention

35. Order of the International Tribunal for the Law of the Sea, Case concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean (Chile/European Community), 20 December 2000

36. Convention concerning the International Commission for the Rhine (Berne Convention), Bonn, 3 December 1976

37. Council and Commission Decision 98/181/EC, ECSE, Euratom of 23 September 1997 on the conclusion, by the European Communities of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects, including Statement submitted by the European Communities to the Secretariat of the Energy Charter pursuant to Article 26 (3) (b) (ii) of the Energy Charter Treaty

38. Opinion of Advocate General of the European Court of Justice Tesauro, case C-53/96, Hermes International v. FHT Marketing Choice BV (reference for a preliminary ruling from the Arrondissementenrechtsbank, Amsterdam)

39. Opinion of Advocate General Jacobs delivered on 10 November 1993; Case C-316/91, European Parliament v. Council of the European Union

40. Opinion of Advocate General Mischo delivered on 27 November 2001; Case C-13/00, Commission of the European Communities v. Ireland

41. Commission of the European Communities v. Ireland, Judgement of 19 March 2002, European Court of Justice (Case C-13/00)

42. European Parliament v. Council of European Union, Judgement of 2 March 1994, European Court of Justice (Case C-316/91)

43. Haupzollamt Mainz v. C. A. Kupferberg & Cie. KG a. A., Judgement of 26 October 1982, European Court of Justice (Case 104/81)

44. Meryem Demirel v. Stadt Schwäbisch Gmünd, Judgement of 30 September 1987, European Court of Justice (Case 12/86), including hearing report and Opinion of Advocate General Darmon of 19 May 1987

45. Opinion pursuant to Article 228 (6) of the EEC Treaty (Competence of the Community to conclude international agreements concerning services and the protection of intellectual property — Article 228 (6) of the EC Treaty), European Court of Justice (Opinion 1/94), 15 November 1994

46. Societé Générale d'Entreprises Electro-Méchaniques (SGEEM) and Roland Etroy v. European Investment Bank, Judgement of 2 December 1992, European Court of Justice (Case C-370/89), including hearing report and Opinion of Advocate General Gulmann

47. Louis Worms v. High Authority of the European Coal and Steel Community, Judgement of 12 July 1962, European Court of Justice (Case 18/60)

48. Sayag v. Leduc, Judgement of 10 July 1969, European Court of Justice (Case 9/69)

49. Krohn & Co. Import-Export (GmbH & Co. KG) v. Commission of the European Communities, Judgement of 26 February 1986, European Court of Justice (Case 175/84), including the Opinion of Advocate General Mancini of 19 November 1985

50. Industrie- en Handelsonderneming Vreudenhil BV v. Commission of the European Communities, Judgement of 13 March 1992, European Court of Justice (Case C-282/90), including the Opinion of Advocate General Darmon of 16 January 1992

51. Judgement of the Court of First Instance of 28 April 1998, Case T-184/95, Dorsch Consult Ingenieurgesellschaft mbH v. Council of the European Union and Commission of the European Communities

International Atomic Energy Agency

52. Note by the Director General of the International Atomic Energy Agency entitled "The international responsibility of the Agency in relation to safeguards", dated 24 June 1970 (GOV/COM.22/27)

53. International Atomic Energy Agency, "Model Protocol Additional to the Agreement(s) between State(s) and the International Atomic Energy Agency for the Application of Safeguards". Reprinted December 1998 (INFCIRC/540)

54. Statute of the International Atomic Energy Agency (as amended up to 28 December 1989

55. International Atomic Energy Agency, "The structure and content of agreements between the Agency and States required in connection with the Treaty on the Non-Proliferation of Nuclear Weapons." Reprinted June 1972 (INFCIRC/153)

56. International Atomic Energy Agency, "The texts of the Agency's agreements with the United Nations," 30 October 1959 and 2 December 1963 (INFCIRC/11 and Add.1)

57. International Atomic Energy Agency, "Obligations to protect confidential information," 27 August 1999 (SEC/NOT/1742 and Adds.1-3)

58. International Atomic Energy Agency, Extract from document entitled "Policy and practice of the United Nations regarding legal actions against persons accused of fraud against the organization and the recovery of assets", undated

59. International Atomic Energy Agency, "Safeguards: (b) The Agency's regime for the protection of safeguards confidential information", 14 November 1997 (GOV/2959)

60. Johnson, Larry D. "Views from practice" from N. M. Bokker and H. G. Schermers (eds.), Proliferation of International Organizations, pp. 471-82 (Kluwer Law Int'l. 2001)

61. International Atomic Energy Agency, "Agreement on the privileges and immunities of the IAEA: Status List as of 12 September 2000," 22 September 2000 (INFCIRC/9/Rev.2/Add.12)

62. International Atomic Energy Agency, "Agreement on the privileges and immunities of the Agency", 26 July 1967 (INFCIRC/9/Rev.2)

63. International Atomic Energy Agency, "The texts of the Agency's agreements with the Republic of Austria", 14 May 1999 (INFCIRC/15/Rev.1/Add.4)

64. International Atomic Energy Agency, "The texts of the Agency's agreements with the Republic of Austria," 10 December 1959 (INFCIRC/15)

65. International Atomic Energy Agency, "The texts of the Agency's agreements with the Republic of Austria and related agreements", 12 December 1976 (INFCIRC/15/Rev.1)

66. International Atomic Energy Agency, "The texts of the Agency's agreements with the Republic of Austria," 28 February 1962 (INFCIRC/15/Adds.1-3, Mods. 1-3)

67. International Atomic Energy Agency, "The texts of agreements between the International Atomic Energy Agency, the United Nations and the Federal Government of the Republic of Austria regarding the headquarters seat and related agreements," January 1983 (INFCIRC/15/Rev.1/Add.1)

International Monetary Fund

68. Translation of Park v. IMF, Seoul District Court decision, 27 January 2000

69. Translation of Park v. IMF, Seoul Appellate Court decision, 19 December 2001

70. Press reports concerning case filed against IMF in Romania

71. IMF, "Policy statement on immunity of Fund officials," 28 June 2002

Multinational Force and Observers

72. Letter from the Director General of Multinational Force and Observers to the Ambassador of Canada, dated 4 November 1999

73. Letter from Canadian Ambassador to Italy to Director General of Multinational Force and Observers, dated 9 November 1999

74. Extract from letter from the Director General of Multinational Force and Observers to the Ambassador of the United States of America, dated 3 May 1990

75. Letter from the Ambassador of the United States of America to the Director General of Multinational Force and Observers, dated 3 May 1990

76. Excerpts from the Annual Reports of the Director General of Multinational Force and Observers, dated 25 April 1987, 25 April 1988, 25 April 1989, 25 April 1990, 25 April 1991 and January 2001

77. The Multinational Force and Observers: Servants of peace (June 1999)

Organisation for the Prohibition of Chemical Weapons

78. International Encyclopaedia of Laws: Intergovernmental Organizations, Entry on the OPCW (Kluwer Law International, 2002)

United Nations Secretariat[19]

79. Report of the Secretary-General, "Review of the efficiency of the administrative and financial functioning of the United Nations; Procedures in place for implementation of article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946" (A/C.5/49/65)

80. The Secretary-General's reports on third-party liability arising from peacekeeping operations, A/51/389 (in particular section II) and A/51/903, as well as General Assembly resolution 52/247 of 26 June 1998, which established temporal and financial limitations on the liability of the Organization arising from peacekeeping operations (now incorporated in SOFAs and SOMAs). It is important to note that the resolution was adopted without a vote (see A/52/PV.88)

81. With regard to the arbitration and settlement of claims of a private law nature against the Organization, reference should also be made to the report of the Secretary-General on "Procurement-related arbitration" (A/54/458)

82. A legal opinion addressed by the Legal Counsel on 23 February 2001 to the Controller, advising on the basis for the settlement and payment of claims against the Organization. This opinion discusses, among other things, the capacity of the Organization to incur obligations and liabilities of a private law nature, the procedures for settling such claims and the internal legal framework under the United Nations Financial Regulations and Rules

83. "An Agenda for Peace", 1995

84. Model Memorandum of Understanding between the United Nations and States contributing resources to a United Nations peacekeeping operation (A/51/967, annex)

85. Report of the Secretary-General on the command and control of United Nations peacekeeping operations (A/49/681)

86. General Assembly resolution 50/30 of 22 December 1995 on the comprehensive review of the whole question of peacekeeping operations in all their aspects

87. General Assembly resolution 49/37 of 9 December 1994 on the comprehensive review of the whole question of peacekeeping operations in all their aspects

World Health Organization

88. Constitution of the Pan American Health Organization

[19] For an earlier practice, reference was also made to the study prepared by the Secretariat for the International Law Commission on the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities (*Yearbook of the International Law Commission*, 1967, Vol. II; 1985, Vol. II; and 1991, Vol. II).

89. Agreement between the World Health Organization and the Pan American Health Organization, 24 May 1949

90. Extract (pp. 77-80) from Burci, Luca and Vignes, Claude-Henri. World Health Organization, Kluwer Law International (2003)